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MAY 05 2006

OFFICE OF PETITIONS

In re Application of :
Xiangfeng Dai :
Application No. 10/672,926 : DECISION REFUSING STATUS
Filed: September 26, 2003 : UNDER 37 CFR 1.47(b)
Attorney Docket No. CRICP-001A :

This is in response to the "REPLY TO DECISION", filed April 6, 2006, which is being treated as a renewed petition under 37 C.F.R. §1.47(b).

The renewed petition under 37 C.F.R. § 1.47(b) is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. § 1.47(b)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor.

Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 C.F.R. § 1.136(a).

The above-identified application was filed on September 26, 2003, without an executed oath or declaration. Accordingly, on January 5, 2004, the Office mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring an executed oath or declaration and a surcharge for its late filing, together with the statutory basic filing fee. This Notice set a two-month period for reply.

In reply, applicant filed the a petition on July 12, 2004, and paid both the petition fee, the surcharge for late filing of the declaration, and the statutory basic filing fee. To make timely this reply, applicant included a three month extension of time

and a Certificate of Mailing dated July 6, 2004.¹ However, the petition was dismissed in a decision mailed on February 6, 2006. Rule 47 applicant: (1) failed to show that the legal representative was presented with the application papers; (2) failed to submit a proper oath or declaration; (3) did not provide a statement of the last known address of the legal representative; and (4) did not establish irreparable damage.

With the instant petition, Rule 47 applicant still has not submitted a proper oath or declaration. The declaration is proper in that it identifies the deceased inventor, together with his citizenship and mailing address. The declaration also properly identifies the non-signing legal representative, together with her information. However, the declaration is not signed by the Rule 47(b) applicant. As stated in MPEP 409.03(b):

In addition to other requirements of law (35 U.S.C. 111(a) and 115), an application deposited pursuant to 37 CFR 1.47(b) must meet the following requirements:

(A) The 37 CFR 1.47(b) applicant must make the oath required by 37 CFR 1.63 and 1.64 or 1.175. Where a corporation is the 37 CFR 1.47(b) applicant, an officer (President, Vice-President, Secretary, Treasurer, or Chief Executive Officer) thereof should normally sign the necessary oath or declaration. A corporation may authorize any person, including an attorney or agent registered to practice before the U.S. Patent and Trademark Office, to sign the application oath or declaration on its behalf. Where an oath or declaration is signed by a registered attorney or agent on behalf of a corporation, either proof of the attorney's or agent's authority in the form of a statement signed by an appropriate corporate officer must be submitted, or the attorney or agent may simply state that he or she is authorized to sign on behalf of the corporation. Where the oath or declaration is being signed on behalf of an assignee, see MPEP § 324. An inventor may not authorize another individual to act as his or her agent to sign the application oath or declaration on his or her behalf. *Staeger v. Commissioner*, 189 USPQ 272 (D.D.C. 1976), *In re Striker*, 182 USPQ 507 (Comm'r Pat. 1973). Where an application is executed by one other than the inventor, the declaration required by 37 CFR 1.63 must state the full name, residence, post office address, and citizenship of the nonsigning inventor. Also, the title or position of the person signing must be stated if signing on behalf of a corporation under 37 CFR 1.47(b).

(B) The 37 CFR 1.47(b) applicant must state his or her relationship to the inventor as required by 37 CFR 1.64.

¹ However, as a four month extension of time was necessary, Deposit Account No. 50-0878 was charged the amount of \$265, representing the difference between the \$740 fee for a four month extension of time and the \$475 fee for a three month extension of time (fees in effect on the petition filing date).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
 Commissioner for Patents
 P.O. Box 1450
 Alexandria VA 22313-1450

By FAX: (571)273-8300
 Attn: Office of Petitions

Telephone inquiries related to this decision may be directed to the undersigned at (571)272-3207.

A handwritten signature in cursive script, appearing to read "Cliff Congo".

Cliff Congo
Petitions Attorney
Office of Petitions